

SENATE BILL REPORT

SB 5208

As Reported By Senate Committee On:
Agriculture & Environment, February 26, 1997

Title: An act relating to environmental complaint handling.

Brief Description: Detailing how to handle environmental complaints.

Sponsors: Senators Morton, Loveland, Newhouse, Rasmussen, Swecker, Hochstatter and Hale.

Brief History:

Committee Activity: Agriculture & Environment: 1/29/97, 2/26/97 [DPS, DNPS].

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5208 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Newhouse and Oke.

Minority Report: Do not pass substitute.

Signed by Senators Fraser and McAuliffe.

Staff: Richard Duggan (786-7414)

Background: The Department of Ecology has been given the authority to adopt such rules and regulations as may be necessary to meet the requirements of the federal Clean Water Act. It has adopted a rule formalizing its authority to enter premises in which are located either an effluent source or related records. The rule also provides the authority to investigate, inspect or monitor suspected violations of water quality standards.

The Department of Ecology has been directed to enforce air quality standards and emission standards throughout the state except in those locations where a local authority is enforcing the state standards or stricter local standards.

With respect to certain types of emissions, the Department of Health and the Energy Facility Site Evaluation Council share the enforcement authority of the department. The Department of Ecology and local authorities may delegate enforcement powers over burning permit laws to fire protection districts, counties, and conservation districts.

Air pollution control agency control officers and the Department of Ecology are authorized to enter private property at reasonable times to investigate complaints of violations of the Clean Air Act.

Current statutory law does not address procedures to be followed by an agency receiving complaints of suspected environmental violations.

Summary of Substitute Bill: The Department of Ecology and the air pollution control authorities are authorized to enter private and public property, at reasonable times and upon presentation of credentials, to investigate possible releases of air pollutants. If a request for entry is denied, the state may seek judicial intervention to gain entry by warrant or court order, but may not seek criminal penalties for the refusal of entry or access. The investigation must be based upon the personal observation of the investigator, or upon substantive allegations contained in a signed complaint, and must be limited to determining whether the suspected release violated state or federal clean air laws or rules, emission permit conditions, or agency orders or directives. Formal enforcement action may be taken by the state only when cogent site-specific scientific evidence supports a finding that a violation had occurred.

The Department of Ecology is authorized to enter private and public property on which an effluent source is located, at reasonable times and upon presentation of credentials, to investigate possible releases of water pollutants. The investigation must be based upon the personal observation of the investigator, or upon substantive allegations contained in a signed complaint, that there is probable cause to believe a violation of the water pollution control act or the oil and hazardous spill prevention and response act has occurred or is about to occur.

The civil liability exemption generally available to those who make good faith reports to government agencies is specifically made available to individuals who in good faith file air or water pollution complaints covered by the provisions of this legislation. Those individuals who knowingly and maliciously include false information in such complaints are declared guilty of a gross misdemeanor. The exemption from public inspection and copying of the contents of such complaints is recognized, but limited to those complaints which are made a part of the record supporting a finding that a violation had occurred or was about to occur.

The provisions of this legislation are not to be interpreted as diminishing the authority of the Department of Ecology to meet the minimum requirements for qualifying the state to administer the federal Clean Water Act.

Substitute Bill Compared to Original Bill: The requirement that specific information relative to the complainant and the occurrence be included in a pollution complaint as a prerequisite to conducting an investigation, a requirement that the landowner be notified of this information, and the further mandatory 20-day postponement of enforcement action to allow correction of the problem are replaced by the substituted provisions described above. The original bill affected only the Clean Air Act and the Clean Water Act, to which the substitute added some impact on the oil and hazardous substance spill prevention and response act. Both bills include a "knock first" requirement that the department seek a warrant prior to an investigatory entry.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Pollution complaints are a means of generating harassment by state investigators. Frivolous complaints may be 20 percent of total, resulting in inquiries and investigations without exposure of instigator. The legislation requires only that the department observe common courtesy. The legislation should lead the department to use of more modern technology.

Testimony Against: Revelation of the identity of complainants would have a chilling effect. The Department of Ecology's ability to investigate suspected violations would be restricted. A possible consequence of the proposed changes might be the loss of USEPA approval of state administration of the federal water act. The need to seek a search warrant when entry is denied would limit the department's effectiveness. The requirement of a notice before imposing a penalty would lose value of surprise investigation. "Whistleblower" protection is circumvented, exposing complainants to retribution.

Testified: Greg Solvie, Dept. of Ecology (con); Bruce Wishart, People for Puget Sound (con); Bert Ruty (pro); Heather Hansen Rainey, WA State Grange (pro); Karla Kay Fullerton, WA Cattlemen's Assn. (pro).